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4 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 MICHAEL A LINEAR,

7 Plaintiff,

8 v.

9 STEPHEN SINCLAIR, D HOLLIBAUGH,
PERCIFIELD, DEBORAH J WOFFORD,

10 Defendants.

Case No. C19-5665 RBL-TLF

REPORT AND
RECOMMENDATION

Noted for September 6, 2019

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12 This matter comes before the Court on plaintiff's filing of a Motion to Withdraw
13 Proposed 1983 Prisoner Civil Rights Complaint. (Dkt. 3.)

14 Plaintiff filed the Proposed 1983 Prisoner Civil Rights Complaint without paying a filing
15 fee or submitting an application to proceed *In Forma Pauperis* on July 22, 2019 (Dkt. 1.) On
16 July 23, 2019 the Clerk of the Court informed plaintiff that he must either pay the full filing fee
17 or submit an application to proceed *In Forma Pauperis* before the action would proceed. (Dkt.
18 2.) Plaintiff has not submitted the filing fee or an application to proceed *In Forma Pauperis*. No
19 summons has been issued in this action, and the defendants have not been served with a
20 complaint and summons.

21 On July 29, 2019 plaintiff filed a Motion to Withdraw the Proposed 1983 Prisoner Civil
22 Rights Complaint. (Dkt. 3.) Plaintiff has informed the Court that he unintentionally filed the
23 complaint in the wrong court and therefore seeks to withdraw the instant action. (Dkt. 3.) The
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undersigned interprets this Motion to Withdraw as requesting that plaintiff's action be voluntarily dismissed.

Pursuant to Federal Rule of Civil Procedure 41(a)(1) a plaintiff may voluntarily dismiss an action without prejudice by filing a notice of dismissal before the defendant serves an answer or motion for summary judgment. However, if the plaintiff has previously dismissed any federal or state court action based on or including the same claim, the notice of dismissal operates as an adjudication on the merits. Fed. R. Civ. P. 41(a)(1)(B). In the present action, no defendant has been served nor filed a notice of appearance. Accordingly, no responsive documents to plaintiff's complaint have been filed. Further, the undersigned is not aware of any previous actions based on the same claim that plaintiff has voluntarily dismissed. Therefore, plaintiff may voluntarily dismiss this action without prejudice. The undersigned recommends that the Court grant plaintiff's motion (Dkt. 3) and dismiss the action without prejudice.

The parties have **fourteen (14) days** from service of this Report and Recommendation to file written objections thereto. 28 U.S.C. § 636(b)(1); Federal Rule of Civil Procedure (FRCP) 72(b); *see also* FRC P 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed by Fed. R. Civ. P. 72(b), the Clerk is directed set this matter for consideration on **September 6, 2019**, as noted in the caption.

Dated this 23rd day of August, 2019.



Theresa L. Fricke
United States Magistrate Judge